

JUMBO MINING CO.

6305 Fern Spring Cove
Austin, Texas 78730
(512) 346-4537
Telex # 76-7177

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DIVISION OF
OIL, GAS & MINING

September 4, 1990
File: OGM940

Mr. Lowell P. Braxton
Associate Director, Mining
Department of Natural Resources
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

FAX NO. 801-359-3940
Copy by Certified Mail

Dear Mr. Braxton:

Re: Drum Mine, M/027/007; REQUEST FOR INFORMAL HEARING

Pursuant to "Amended and New Rules, dated December 12, 1988, R613-005-1-2. Informal Process" of your Agency, I herewith submit written request for an Informal Hearing:

Rule 2.13.112: See below

Rule 2.13.112: Division File No. _____

Rule 2.13.113: Registered mail, return receipt requested.

Rule 2.13.114: State of Utah Mined Land Reclamation Act, Title 40, Chapter 8, Utah Code Annotated, as Amended.

Rule 2.13.115: Permission to conduct leak tests on two existing heap leach pads as required by the Utah Department of Health, and as fully described in letters to your Agency, dated May 30 and June 22, 1990 (attached hereto for ready reference).

Rule 213.116: STATEMENT OF FACTS AND REASONS FORMING THE BASIS FOR RELIEF OR ACTION:

1. Jumbo Mining Company (JMC) seeks to comply with the requirements of the Utah Department of Health to provide evidence that two existing heap leach pads do not leak, and are otherwise suitable for continued use. When the prior owner of the property (Western States Minerals Corporation) constructed these pads, they failed to obtain permits from the UDOH prior to construction. After several years of operation, during which time no operating problems were noted in the record, and shortly before the entire operation was sold to JMC by Western, said Agency ordered that these heaps be removed from service, because they were constructed without prior permit.

As these heaps were the last to be constructed, and appear to be

in good condition, JMC desires to have them permitted for continued use for the limited ore reserves which are currently known to remain in the area.

The UDOH has requested that JMC drill approximately ten test wells around the perimeter of these heaps, and to have these logged before and after by neutron and gamma methods, and to submit various geological maps, etc. The heaps were then to be sprinkled with available solutions for a minimum of 60 days, and all test wells were to be logged again to determine if increased moisture could be detected in the test wells.

Last year, at considerable expense, JMC completed all of the above preliminary steps and started test sprinkling last fall. However, shortly after the test started, severe cold in the area prevented pumping of water from the well located seven miles distant from the heaps, and the test was terminated.

This spring, as required, the test wells were relogged and preparation started for a new test. However, on February 26, 1990, the DOGM received a letter from Western, objecting to the test on the grounds that the referenced heaps had not been formally bonded by or transferred to JMC, as JMC had not chosen to assume full responsibilities for reclamation of certain portions of the mine site which were in default prior to the time the property was sold to JMC.

It should be noted that JMC has previously provided DOGM with a copy of the pertinent section of the recorded QUITCLAIM DEED AND ASSIGNMENT whereby the property was transferred from Western to JMC. This document indemnifies Western for any defaults arising AFTER, and clearly exempts JMC from any consequences of defaults arising PRIOR to the date of transfer under any permits, etc.

The fact that Western failed to set aside 35-50,000 cubic yards of topsoil as required by its permits prior to the sale to JMC has not been denied. Western now seeks to coerce JMC into indemnifying it for its previous default, and seeks to retain the cooperation of DOGM to block JMC's legitimate use of the facilities as a bargaining tool to this end.

The DOGM by letter dated February 28, 1990 ruled that the proposed leak detection test constituted "mining operations" and prohibited JMC from proceeding.

Subsequently, by letter dated May 30, 1990 JMC (having failed to receive any cooperation from Western) requested reconsideration by the DOGM of the ruling that this test constituted "mining operations" in the normal and usual sense, and cited several factors which were pertinent.

This appeal was denied by letter dated May 31, 1990 which emphasized that these areas could not be used by JMC "until the JMC bond and permit have been amended to accommodate the mining and reclamation operations attendant to the use of these pads." In response to this latter directive by DOGM, JMC has negotiated

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and posted a cash bond for the full reclamation responsibility for the areas in question, and forwarded to Western and the DOGM all of the required transfer forms, etc.

Thus the State of Utah is now doubly bonded for the reclamation of the areas in question. However, Western has refused to sign the transfer form, and the DOGM has to date refused permission to JMC to proceed with the leak test, despite being doubly bonded!

ARGUMENTS

- 1) This is not a question of property ownership; this is strictly a question of the form and substance of protecting the State of Utah's lawful interests in reclamation of mining properties. Thus, it is our contention that DOGM has full authority to grant JMC's request for permission to conduct this test, provided that it deems that its reclamation responsibilities are provided for.
- 2) In accepting JMC's bonding for full reclamation responsibility for these heaps, DOGM has indicated that these reclamation responsibilities have been provided for by JMC, above and beyond any bonding it might retain from Western for other, preexisting defaults by Western.
- 3) JMC was entitled to rely upon the Agency letter dated July 12, 1990 which stated:

"As I indicated in my May 31st letter, the Division could allow JMC to commence test leaching of these heaps under EITHER (caps provided for emphasis) of the following provisions:

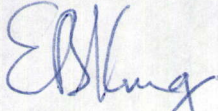
1. JMC obtain written permission from WSMC to commence said 60-day test leach of pads No. 2LG and No. 7. (That is, operate under Western's bond)
2. JMC amend their approved permit and update the current reclamation surety accordingly to include pads No. 2 LG and No. 7." (That is, operate under JMC's own revised bond)

Although this letter goes on to spell out the usual transfer procedure, wherein JMC's and Western's signature of the transfer forms are needed, I do not believe that the DOGM is justified in prohibiting JMC from proceeding with the test, and/or any other permitted and bonded activity, merely because of Western's capricious refusal to sign the transfer form.

4) JMC has suffered severely in the past because of Western's defaults on its permits; we do not believe that there is any justification in this instance for continued penalization of JMC by DOGM for these preexisting problems.

As I will be out of the country for the next few weeks, I have asked Mr. Steve Clyde of Clyde, Pratt and Snow to represent Jumbo Mining Company in my absence, attend any hearings which might be scheduled, and to respond to any questions which might arise. Please feel free to contact him at the telephone number given below. Mr. Austin and Mr. Hartshorn will be available and will assist Mr. Clyde as necessary in the expeditious handling of this matter.

Sincerely yours,



E. B. King

cc: F. Rex Rowley, BLM, House Range Resource Area
David Rupp, Dept. of Environmental Health
D. Hartshorn, Drum Mine
Frank Filas, Western States Minerals Corp.
4975 Van Gordon St., Wheatridge, CO 80033
Steven Clyde; Clyde, Pratt & Snow; tel no 801-322-2516
D. P. Austin; 8181 S. Shorthills Dr.
Salt Lake City, UT 84121